

**BATTLE CREEK CITY PLANNING COMMISSION
MEETING MINUTES
Wednesday, November 19, 2008**

1. Call to Order:

Chairman Troutman called the meeting to order at 4:01 p.m.

2. Attendance:

Members Present:

Steve Barker	William Morris	John Stetler
Mark Behnke	Chris Simmons	Mike Troutman
Preston Hicks	Chip Spranger	

Members Excused: Jan Burland

Staff Present: Glenn Perian, Senior Planner, Planning Dept.
Susan Bedsole, Licensing and Contract Director
Leona Parrish, Administrative Assistant, Planning Dept.

3. Additions or Deletions to the Agenda: None

4. Approval of Minutes: Meeting Minutes of October 22, 2008.

A MOTION WAS MADE BY COMMISSIONER BARKER, SUPPORTED BY COMMISSIONER SIMMONS TO APPROVE THE MINUTES OF OCTOBER 22, 2008 AS PRESENTED. VOTE ON MOTION: ALL YES, NONE OPPOSED MOTION CARRIED.

5. Correspondence: (8) Eight hand-outs provided at today's meeting.

6. Public Hearing:

Mr. Stan Beckwith, 84 Bond Ave., asked that Petition #Z-05-08 (item #D) on today's agenda be presented first; he would like to save expenses for having his attorney present today on his behalf.

A MOTION WAS MADE BY MAYOR BEHNKE, SUPPORTED BY COMMISSIONER MORRIS TO MOVE #Z-05-08 TO BE FIRST ITEM ON THE AGENDA FOR PUBLIC HEARING AND NEW BUSINESS.

A ROLL CALL VOTE WAS TAKEN: (7) SEVEN IN FAVOR; (1) ABSTAINED; NONE OPPOSED. MOTION CARRIED.

- A. ZONING RECLASSIFICATION (#Z-05-08): Petition from Anchor Properties, 44 Grandville Ave., S.W., Grand Rapids, MI 49503, requesting a Zoning Reclassification from "R-1B Single Family Residential" to "C-2 General Business" for the following described (39) properties located on Bond Ave., Parcels 4000-00-003-0 Thru 4000-00-012-0; 4000-00-023-0 Thru 4000-00-033-0; 4000-00-014-0, 4000-00-015-0, 4000-00-043-0, 4000-00-044-0, 4000-00-049-0, and 1220-00-024-0. THE N 56 FT OF LOT 3, LOT 4, AND THE S 10 FT OF LOT 3 THRU LOT 16; & LOT 22 THRU LOT 32; LOT 40 THRU 49 (EXCEPT THE WEST 30.5 FT OF EACH LOT); AND LOT 50 EXCEPT THE W 30.5 FT OF LOT 50 OF**

HENRY'S ADD TO URBANDALE; ALSO LOT 12, LOT 13, & LOT 16 OF BREWER'S ADD TO URBANDALE; ALSO REQUESTING PORTION OF BOND AVENUE TO BE VACATED.

Mr. Matt Williams, Anchor Properties, was present to answer any questions. First he wanted to thank the Planning Commission for accepting Mr. Beckwith's request for changing today's agenda into consideration. He provided a summary of their project and brought a picture of the properties outlining the ones they wished to purchase; all except Mr. Beckwith's on Bond Avenue. Stated they wished to build a new Felpausch and have outlot properties on Bedford Road, which they wanted to be zoned "C-2 General Business" for use such as banks or retail businesses.

Mr. Williams said they would want the City of Battle Creek to vacate Bond Avenue for their project. Noted they are trying to work with Mr. Beckwith and that his property consist of (9 acres) and would not have a zoning change. Said Mr. Beckwith has requested they provide access for him through Aster Ct. which is located to the East of their project and would still have the benefits of a public road.

Mr. Williams also noted the two residential properties across the street from Mr. Beckwith would not be included in the development and asked that the city staff remove them from the plans for rezoning. They would then sell those two properties as residential properties when the project is completed.

Mr. Williams stated this project would need to be done in steps:

1. Make sure residents are not left without services (Construct new Bond Ave. utilities).
2. Vacate Bond Avenue; (Then old Bond Ave. road and utilities can be removed).

Said the timing of the steps was important and the closings would be on the same day and in about 3 months come back to remove the homes. He noted regarding the old Felpausch store located in the plaza; they had no control over that location. Said the Spartan Store would relocate no matter what, to provide a better state of the art shopping experience.

Mr. Williams noted that property owners on Aster Ct. would be impacted and were not happy with the zoning change. He noted the following reasons to support the Re-zoning:

- Want to offer better business to customers
- Consistent with the Future Land Use Master Plan
- The Neighborhood Planning Council approve of this new development
- It would have an immediate impact on other businesses near-by, which are also in support.

Mr. Williams asked if they could postpone a decision until the next Planning Commission meeting when they would hopefully have all the development agreements settled and complete.

Ms. Susan Bedsole asked Mr. Williams if he was asking the Planning Commission to postpone his application. Mr. Williams stated, yes he would like to postpone his petition.

Ms. Bedsole stated they have been working with the developer, property owners regarding all the issues for the vacating of Bond Avenue and need to make certain those issues are resolved. Said it is not only just a rezone because of the vacation of the street, and moving of potential and dedicated new street and still have citizens left on that street. Noted it is a rather complex process we need to work through and make certain we have a good road map that everyone has agreed upon. The administration feels comfortable with the postponement of the issue until the next meeting.

Commissioner Troutman stated we would continue with the public hearing as it has been noticed.

Commissioner Chris Simmons asked if the proposed public drive was intended for retail development access or strictly for the residential properties. Mr. Williams stated it is envisioned to be strictly for the three residents at the South end of Bond Ave.; the Engineering Department might want to see a cul-de-sac for a turnaround and Mr. Beckwith said that he would want it to remain as is as much as possible. Not connecting the public drive to the retail would serve their request best.

Ms. Bedsole stated it is the Cities recommendation that it only be a public road, and not an access to the retail businesses.

Commissioner Simmons said he was concerned with others wanting to use as access to the businesses. He asked if a 50 ft. natural buffer would be feasible with Mr. Beckwith. Mr. Williams stated he was hesitant to commit to the 50 ft.; he would think a buffer would be best next to his home which would be less than 50 ft. and would be between his property and the development. Stated that Mr. Beckwith would really want it to go somewhere else, but will do whatever is agreed upon between them.

Commissioner Simmons said it appears that Hinman Avenue is already buffered somewhat; regarding the one property on Aster Ct.; are there plans to do a buffer for them also. Mr. Matt Williams stated there has not been any discussion regarding a specific buffer along that area.

Mr. Glenn Perian stated this petition is a request for a rezoning and the issues regarding a buffer would be done at a later date if this petition were approved, that the site plan would address those issues once the rezoning has been approved.

Commissioner Barker asked to explain the developer's contract with Mr. Beckwith. Mr. Williams stated they do not currently have a contract with Mr. Beckwith, but would like to sign something with him once they reach an agreement.

Commissioner Barker asked if it would be specific to what they are doing with this site and what will be agreed to regarding his property. Commissioner Barker stated if there was an alleged default on the contract then Contractual Law would make it out of the City's hands if they had an agreement. Mr. Williams agreed it would be best to have an agreement between two property owners and not involve the City.

Mr. Walt McIlroy, 1661 W. Michigan Avenue, came forward to speak. He stated the Felpausch store cannot grow where it is currently, because of the power lines and that Urbandale cannot afford to lose a grocery store. Said it was well received by the Neighborhood Planning Council and they are in favor of the rezone. He strongly request it be approved and suggested if the developer changed their mind regarding the re-zoning, that it would revert back to the Residential zoning in order to protect the residential property owners.

Ms. Debbie Owen, 58 Bond Avenue, came forward to speak. Stated she has lived there for about 27 years and Urbandale has not grown and is somewhat stalled. She wants to see Urbandale grow and if the Spartan store keeps people there it would be terrific for the area. She said she is happy with her home and will not make much on this deal, but do plan on staying in the Urbandale area and hope it would be rezoned to make Urbandale a bigger and better place for the residents.

Mr. Bruce Babineau, 95 Bond Avenue, came forward to speak. Stated his property was not included in the re-zone, but thinks it would be good for growth. Said he can sell his home and move his family.

Mr. Ed Scheinfeldt, 1 Brizse Ave., came forward to speak. Stated as a resident of Urbandale he would be thrilled to have a new store as it would also increase the tax base for the City. Noted that he was present also as a representative of the Neighborhood Planning Council #5, who hardly endorse this re-zoning request and the vast majority of residents involved at the meeting were also in favor.

Mrs. Ron Channels, 22 Bond Avenue, stated they live behind Speeds for 27 years and have seen a lot of the elderly neighbors pass away; the properties become rentals and are getting to be in bad shape. She would like to see this approved as it would improve the area as it has been deteriorating.

Mr. Richard Stoiber, 64 Bond Avenue, stated he is for this zoning change 100%. Said Urbandale needs it and would be more than just a store there, it could be a bank etc.; it would improve the area.

Speak in Opposition:

Mr. Matthew Justice, Attorney with Lennin Miller in Kalamazoo, for Mr. Beckwith came forward to speak. He stated that Mr. Matt Williams has been very cooperative and helpful; said he had only been involved for a couple of weeks. Noted the Planning Commission today has already asked the questions he was prepared to ask. Said Mr. Beckwith is firmly opposed and does not want this project to go through at all, and wants everything to stay exactly the same. Stated the Beckwith's are elderly and in poor health and do not want to move; said it is not about the money their concerns are being able to live out their lives in this home and that hopefully they will reach an agreement with Anchor Properties. He asked that the Planning Commission insist there will be an agreement between Anchor Properties and Mr. Beckwith before they approve the rezoning.

Commissioner Barker asked Mr. Justice regarding the agreements if he had a concern that if Anchor Properties were to default on the agreement; being his attorney how do you ensure that he is well protected.

Mr. Justice said the standard way would be creating a contract of liquidated damages. If it is breached the agreement would have everything noted and would include all the details. It would have to be enough that Anchor Properties would pay it, but not so much that they would not be in agreement.

Commissioner Barker asked if the agreement would be detailed to the extent that it would be so many feet set-offs etc. and detailed analysis regard to the actual new construction and properties. Mr. Justice stated it was his hope that it could be; they will need to work out the details.

Commissioner Barker stated the rezoning issue as you move further and further away from the proposed rezoning is of less concern to the residents; if it is next door, rather than down the street it would directly affect that property owner. Need to make an agreement so everyone is satisfied.

Mr. Justice said he is very optimistic, that just about everything they have asked for; Mr. Williams has either said yes or has not yet responded, which he believes is because he had not been able to get to as yet and not that it would be refused.

Commissioner Simmons stated he was glad they have been very responsive and see by some of the proposals such as the access drive that many of the concerns have been addressed. He asked if there was anything else major needing the Planning Commission to take into consideration.

Mr. Justice stated Mr. and Mrs. Beckwith have medical conditions (nervous conditions) and that noise would be a concern. They do not want a cul-de-sac there as they think it would create more truck traffic, and are trying to create a contract so that what changes are done would run with the land.

Commissioner Simmons stated that problems regarding the buffer zone and nuisance issues; the City Ordinances would address many of Mr. Beckwith's concerns.

Mr. Glenn Perian referred to the letter handed out today from Mr. & Mrs. Beckwith (paragraph 3) outlining concerns and issues the city staff are trying to address those issues, said an development agreement needs to be in place. Said the city will review the development agreement and ensure those things are addressed through a new public road, etc. Noted the city will ensure the ordinance requirements are all met before this moves forward. Some of the other issues regarding the extra buffering would need to be negotiated between the two private property owners.

Mr. Justice stated even though it is written in the city ordinance, it is also good to have it in a contract.

Commissioner Morris asked Mr. Justice if his client would be in support if all their concerns were met for this project. Mr. Justice stated yes; He and Mr. Williams have spoken and they would formally agree if their conditions are met.

Commissioner Morris stated that is sounds like everyone is trying to reach an agreement. He asked Mr. Justice if it were approved today did he feel comfortable that the concerns would be worked out with Mr. Williams and the City. Mr. Justice stated yes, he is an attorney and believes they will be worked out when agreements have been signed; until it has been signed they are opposed to the rezoning. Said yes, he is comfortable working with Mr. Williams.

Mrs. Carol Koehler, 8 Aster Ct., stated her home was the only home on Aster Ct. and lives there with her husband and three children. Stated she had not seen a plan for the new road until tonight. She wanted to share some of the transactions she has had with Anchor Properties:

- (1) She was included in the plan originally and had been terminated
- (2) She has an Art business and had made notices regarding her prospective move
- (3) Contract was lost
- (4) Was told hers was not included in August, it has been an emotional strain and is concerned about property values, environment, pollution and pavement run off, etc.
- (5) States she has been given conflicting information
- (6) She has MS and asthma; this has caused her to be ill and in December will be having surgery
- (7) She wishes her neighbors to be happy and wants to move and sell her home for its value.

Ms. Koehler asked that the Planning Commission consider all of her concerns and fears before making a decision.

Mr. John Pitale, 35 S. Hinman Avenue, stated he has the same concerns living nearby. Said he lives at the dead end and likes it; he asked how it would impact his property in this current economic environment. Said he is of retirement age and what if he wanted to sell his home, who would buy it facing Felpausch. Said he moved there because he liked the quite. Noted the Plaza is not doing well currently and this would be another area not being used. Said he did not want to look at the back of Felpausch store and that he had been left out of being informed until receiving the 300 ft. notice from the City.

Mr. Justice provided (4) letters from acquaintances of Mr. Beckwith, endorsing his character and volunteer work he gives to the community.

Mr. Matt Williams, Anchor Properties, said he understands Ms. Carol Koehler will be impacted and will work with them to do buffers etc. Have been working on this project for about nine months, and have been through about 14 different plans. Will continue to work with the Koehler's as best they can.

Ms. Channels, 22 Bond Avenue, said she lives next to Speeds for years and that Anchor Properties approached them, that they did not go to them. Said they just want to improve Urbandale and at this time in their lives some of the neighbors want to move to smaller homes. She is sorry that Ms. Koehler went ahead and made plans prematurely.

Mr. Lee Simmons, 76 Bond Avenue, stated he grew up at 22 Bond with his parents. Said this effects Battle Creek and everyone not just Bond Avenue, and would also increase jobs.

Mrs. Carol Koehler, 8 Aster Ct. stated she is in opposition because she will be mostly impacted besides Mr. Beckwith. Her plans to move ahead were because of her Art business and needed to inform others in advance. Said her stress is due to changes that are ongoing.

Mr. Kevin Canfield, 52 Bond Avenue, said he has lived there for 3 years; is in support and would be a good opportunity and good for the community. He stated Anchor Properties have been very good to them and totally respectful and have kept him informed. Said he is totally in support of this rezone.

Commissioner Troutman asked if there was anyone else present to speak in favor, seeing none asked if there was anyone present to speak against this petition.

With no one else wishing to speak the Public Hearing was closed.

- B. SPECIAL USE PERMIT (S-07-08): Petition from Kathy Webber, Clearwire US, LLC, 1738 Foremost Dr., SE, Grand Rapids, MI 46546, acting with the consent of Battle Creek Academy for a Special Use Permit for a Wireless Communication Tower (150 ft. Monopole) as permitted under the Planning and Zoning Code, Chapter 1297, Section 1297.09, for property located at 480 Parkway Dr., Parcel # 0135-00-108-0. BEDFORD TOWNSHIP SEC 35 T1S R8W W 1837 FT OF S 907.5 FT OF SW 1/4 SD SEC EXC W 38.6 FT FOR LIMIT ST EXC N 33 FT FOR ROSENEATH ST EXT.**

Ms. Kathy Webber, 505 Pleasant St., Grand Ledge, MI; Clearwire US LLC, was present and provided new plans for the tower as the original plans had included a flag and have been changed to omit a flag. Representing Clearwire and said they have a very small seatrain for this existing technology; there is a system that has already been leased and is in place, and there are two holes in Battle Creek that they are trying to add antennas. Stated they have searched the area and there are no towers, this is why they are requesting this new monopole that will be stealth, will be flush mounted and can be painted. Noted it would be an opportunity for the school for a long term income and also provide a co-location for other towers to locate. Noted she did attend the Neighborhood Planning Council meeting and said they were in favor as it would provide a less expensive service for that area.

Commissioner Simmons noted there was no correspondence on record from the Neighborhood Planning Council. He asked if they had passed a resolution in support at their meeting.

Ms. Webber stated Rosetta Sanders said she was going to attend this meeting tonight and had a meeting previous to this one and perhaps it ran late. She said that everyone at the meeting was in favor.

She did not receive her meeting notification packet for today that was mailed to her and had to have the information faxed to her today, and could not let the NPC know the exact time and date of the meeting. Said they did not receive anything in writing from that council stating their support, and had informed her they would send something in writing and also attend this meeting today.

Commissioner Morris asked why we just received the new plans today and not sooner. He stated when he spoke to her on the phone the school did not want the flag or was not interested.

Ms. Webber stated it was because they moved the location. It was supposed to be directly by the back door to the school and was to replace the existing flag pole; when the school realized the size of the 50 ft. compound to accommodate the co-locaters they did not want children to walk by it and then needed to get new developer plans done without a flag at a different location. Said they felt it would be silly to add a \$4,000 dollar flag to a pole that they were trying to hide in a corner, so the flag was removed.

Commissioner Morris stated in the original plans it noted barbwire, which is not allowed in a residential area. Ms. Webber stated they can do whatever type of fence is requested.

Commissioner Morris asked if this tower was for cell also in addition to internet. Ms. Webber said that is what this company does; they are partnered with Sprint and doing wireless intranet. Yes, it can be just for internet and can be used for cell also; the structure is the same, the antenna is what is different.

Commissioner Barker asked what the diameter was for the base of the tower; it was not shown in the plans. Ms. Webber said she was not sure, thought it was approximately two-feet at the base and would taper to the top.

Commissioner Barker asked Mr. Perian if we had received a photo simulation. Mr. Glenn Perian stated no, we did not receive. He noted that on the second page labeled LS1 there is a complete drawing of the site.

Commissioner Barker asked regarding the definition of stealth as it applies to our ordinance; his first reading of this proposal seems they are calling a flag pole that is not a flag pole. Does this comply with out underlying statute as he is curious if the application is meeting the minimum requirements of our statute. This is only the second proposal they have seen under this statute and the first time he did not believe it was stealth.

Mr. Perian stated he believed the original drawing that was included in your packet was better in complying in the stealth portion of the ordinance because of the flag being present. The tower at Columbia and Woodrow was approved by the City Commission and it is a mono pole type that has been painted white and was considered stealth at that time. Said it was up to the board to determine that what they are proposing is stealth.

Ms. Webber stated she did not order the tower; said she had asked the city to make sure that they do comply. If the city has certain requirements they can follow them, just let them know what is allowed. She showed other company tower and mono pole and said they can do whatever type we wanted.

Commissioner Simmons stated his personal opinion regarding it being without a flag; mentioned the one in Kalamazoo, Portage area drawing attention to the pole and he preferred it to be without a flag and would be less stealth. Noted the school already having a pole with a flag it would be redundant.

Mayor Behnke asked how many other towers did they have in the City of Battle Creek currently.

Ms. Webber said they do not have other towers, they have sites located where they are going to co-locate and these are holes in their network that are holding them up. They would not have their launch until then, and they are proposing another tower on Main St. at the Community Action Agency.

Mayor Behnke asked if they have any that are currently co-locating and if this was an area that is not currently being covered. Ms. Webber stated yes to both questions.

Mayor Behnke stated he feels it is important to have the NPC approval and that it is good that they have communicated with Rosetta, but need to have their approval.

Commissioner Morris stated he had spoken to Rosetta Sanders and she was in favor. He asked Ms. Webber if there was another area for the tower.

Ms. Webber stated they wish there was; with this technology it is limited and are trying to cover the residential areas for intranet services. Because this is a large enough parcel and schools can always use the income, they did try their smoke stack but the trees were too high.

Commissioner Morris asked how far does this reach and if the tower downtown would work for this area. Ms. Webber stated they need their antennas to be about one-mile apart. She stated regarding the tower downtown; Clearwire is already there and no it would not reach this area.

Commissioner Troutman asked if there was anyone else present to speak in favor, seeing none asked if there was anyone present to speak against this petition.

With no one else wishing to speak the Public Hearing was closed.

C. ZONING RECLASSIFICATION (Z-03-08): Petition from Mahmoud & Cynthia Fadel, 22501 Waubascon Rd., Battle Creek, MI, requesting a Zoning Reclassification of the following described property from “R-1B Single Family Residential” to “C-3 Intensive Business District” for property located at 893 W. Territorial Rd., Parcel #6950-13-701-1. PRAIRIEVIEW PLAT N 139 FT OF W 148.5 FT OF LOT 2.

Ms. Cynthia Fadel, 22501 Waubascon Rd., was present stated she was requesting this re-zoning in order to sell cars at this location as this was her husband's business. Said she planned to fix-up this property and do some landscaping, that it would be a family ran business. Said she had purchased this property as a commercial property and searched back as far as 1985, thinks that is when the township merged with the city and it was a gas-station at that time.

Commissioner Simmons stated when petitioner had attend the NPC meeting there was some concerns from the members; they suggested the petitioner do some research and bring back to them additional information. To his knowledge that had not been done. The Neighborhood Planning Council had submitted a letter stating they had asked Ms. Fadel to return to their meeting and had not brought anything back to the Neighborhood Planning Council.

Ms. Fadel stated she did not recall being asked to do any research, but did remember there was some concerns regarding it is a nice residential lot and that a home should be built there. Stated there are other commercial properties around this property further west.

Commissioner Simmons noted there is commercial on the west side of Woodrow (café), but across the street on Territorial are residential apartments with additional residential all around. This property has not been zoned commercial and is a legal-nonconforming commercial property.

Commissioner Morris stated that in talking to the Planning Department it is currently an allowed legal-nonconforming use and that it was used as a car repair garage. He asked if they planned on fixing up the property.

Ms. Fadel stated yes, they wanted to sell it and decided they are in the car business and want to fix-up the property and sell cars. Stated she tired to rent and the people did not pay their rent, so they want to do a small branch of their business and make it look as suitable to a neighborhood situation as possible.

Mr. Thomas Cramutolo, 337 Lakeshore Drive, stated he is the owner of surrounding property and asked how it will be taken care of; as he bought it to build homes (provided a map outlining his property including the parcel with a 4-unit apartment). Said they need sewer and water and has a four-unit apartment near this area. Said he would never be able to build as it does not support the utilities and need to change the zoning. Noted he owns property on Fairfield and Woodrow where there are no utilities there also. He said he attended the NPC meeting.

Speak in Opposition:

Ms. Cindy Foster, 67 S. LaVista, provided a letter from the Neighborhood Planning Council in opposition.

Commissioner Simmons understands the blight of the owner, but it would open up Pandora's Box if approved; what would become of the adjacent property. Said the Master Plan does not support the re-zoning. If approved it would cause problems and he could not support this re-zoning.

Mr. Thomas Cramutolo, 337 Lakeshore Drive, stated the Master Plan is outdated and needed to be reviewed.

Commissioner Morris stated this has been a commercial property for many years and the owner is looking to improve the property. It is not like they would be approving something that has not been there previously.

Commissioner Troutman asked if there was anyone else present to speak in favor, seeing none asked if there was anyone present to speak against this petition.

With no one else wishing to speak the Public Hearing was closed.

- D. ZONING RECLASSIFICATION (Z-04-08): Petition from Mason-Capital, LLC, C/O Hinman Co., 750 Trade Centre Way, #100, Kalamazoo, MI 49008, requesting a Zoning Reclassification of the following described property from "O-1 Office District" to "C-2 General Business District" for property located at 2550 Capital Avenue, S.W., Parcel #6180-10-893-0. OLD MILL GARDENS LOTS 191 THRU 195 EXC BEG NE COR LOT 191 - SLY ALG E LI LOTS 191 & 192, 110 FT - WLY PAR WITH S LI LOT 192, 4.5 FT - NLY PAR**

WITH SD E LI 94 FT - NWLY TO PT ON N LI LOT 191 LYING 11 FT WLY OF POB - ELY TO POB, SUBJ TO
AT&T EASE OVER ELY 16.5 FT THEREOF.

Mr. Andy Wenzel, Development Director, Hinman Co., was present stated the Hinman Company and its related entity recently acquired the now vacant National City Bank drive thru. He explained the zoning area surrounding this property: Said they own the properties to the north which is Capital Office Center, and property across the street to the east, Capital Center. Noted the properties to the south of this property is zoned "C-6 Major Highway Interchange" which is the highest density within the commercial zones. Said the property to the west, which is residential property that is half zoned "0-1 Office" and "Residential", they abut office or commercial zoned properties. Said before they decided to purchase this property they had spoken with Mr. Michael Buckley in the Planning Department, which agreed they were on the right track with the retail office, and mixed use of this property. Stated it would provide more retail and service uses for this area, said they do not currently have users lined up to sign leases at this point.

Noted in September 2008, they attended the Neighborhood Planning Council #11, which had some good comments for uses they would like to see for this property such as: coffee shop, restaurant, ice-cream shop, sandwich shop, or print shop that would be good uses for the neighborhood and would be welcomed. Mr. Wenzel said the NPC #11 did not provide a letter of support because of not knowing what uses would be there.

Mr. Wenzel said they also met with the surrounding property owners and provided to the board copies of letters of support from adjacent property owners: Mr. Tim Shank, 2580 Capital Ave. S.W.; Mr. Gerald Perry, 147 Mason Road; and Ms. Minda Huff, 152 Mason Road.

Mr. Wenzel wanted to address some concerns there might be such as hours of operation; he said the types of businesses would not be much different than what is currently allowed. Said it is within the Comprehensive Plan use. They are looking at retail and would help create more jobs.

Commissioner Morris wanted to thank them for their continued support in the City of Battle Creek. That he felt this was a great idea for this location.

Speak in Opposition:

Mr. George Vallillee, 18 Christy Road, stated he had bought his home in 1956 and had seen many changes, to what is there today. Said he is adjacent to the National City Bank, bound by the west side; on the south side towards the highway is the Hinman Capital Centre and have commercial on two sides of their property. In the past when the Hinman Co. asked regarding the rezoning of vacant land that was in bad condition, the City Commission required a buffer when it was developed. Said they had done an excellent job and are good neighbors.

Mr. Vallillee said in this case he thinks it is a negative thing for their area; he is a member of NPC #11 and as Mr. Wenzel stated at the meeting there were no plans as to what would be done if it were rezoned. He feels this is a weakening of the systems slowly. Noted that in the past year or two the City denied a resident that is adjacent to this property a request for a rezone and we need to maintain the interface with commercial and residential properties. He thinks it would be a detriment to the residents surrounding this property and is opposed.

Commissioner Troutman asked if there was anyone else present to speak in favor, seeing none asked if there was anyone present to speak against this petition.

With no one else wishing to speak the Public Hearing was closed.

7. Old Business: None

8. New Business:

- A. **ZONING RECLASSIFICATION (#Z-05-08):** Petition from Anchor Properties, 44 Grandville Ave., S.W., Grand Rapids, MI 49503, requesting a Zoning Reclassification from “R-1B Single Family Residential” to “C-2 General Business” for the following described (39) properties located on Bond Ave., Parcels 4000-00-003-0 Thru 4000-00-012-0; 4000-00-023-0 Thru 4000-00-033-0; 4000-00-014-0, 4000-00-015-0, 4000-00-043-0, 4000-00-044-0, 4000-00-049-0, and 1220-00-024-0.

MOTION WAS MADE BY COMMISSIONER SIMS, SUPPORTED BY COMMISSIONER BARKER TO POSTPONE THE PETITION FROM ANCHOR PROPERTIES FOR ZONING RECLASSIFICATION FROM “R-1B SINGLE FAMILY RESIDENTIAL” TO C-2 GENERAL BUSINESS” FOR (39) PROPERTIES ON BOND AVENUE IN ORDER TO REACH AN AGREEMENT WITH ALL PARTIES.

Discussion: None

A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED TO POSTPONE.

- B. **SPECIAL USE PERMIT (S-07-08):** Petition from Kathy Webber, Clearwire US, LLC, 1738 Foremost Dr., SE, Grand Rapids, MI 46546, acting with the consent of Battle Creek Academy for a Special Use Permit for a Wireless Communication Tower (150 ft. Monopole) as permitted under the Planning and Zoning Code, Chapter 1297, Section 1297.09, for property located at 480 Parkway Dr., Parcel # 0135-00-108-0.

MOTION WAS MADE BY MAYOR BEHNKE, SUPPORTED BY COMMISSIONER BARKER TO APPROVE THE SPECIAL USE PERMIT FROM CLEARWIRE US, LLC, FOR A WIRELESS COMMUNICATION TOWER (150 FT. MONOPOLE TO INCLUDE THE STAFF RECOMMENDATIONS REGARDING NO BARBWIRE TO BE USED FOR PROPERTY LOCATED AT 480 PARKWAY DRIVE.

Discussion:

Mayor Behnke suggest that we receive formal approval from the Neighborhood Planning Council before it be presented to the City Commission. Noted he would not be in support if it were not received.

Commissioner Barker stated for the record he does not support the petition as it appears the application is defective and moreover the NPC’s lack of information; said the onus is on the moving party to provide this information and not on the NPC. Regrettably at this point he would not be in support of the motion.

Commissioner Morris stated he is in agreement with Commissioner Barker.

Mayor Behnke hopes they are not sending the wrong message to this business; said if there are problems he would rather table it and work out the problems than defeat it and send the wrong message to the business. If there are some things they can negotiate in the interim in the next couple months, it would be better to table it than defeat it and cost this business \$600 dollars for the application fee.

Commissioner Simmons stated if they approve as the Mayor suggests; that ultimately it needs to be approved by the City Commission and hopefully at that point they would have an aye or nay

from the Neighborhood Planning Council, which would be a reasonable timeframe to provide. The only other issue he sees is regarding the barbwire which will be addressed.

Commissioner Hicks asked the petitioner if they would work everything out and have ready for the City Commission meeting. Petitioner, stated yes.

A ROLL CALL VOTE WAS TAKEN: FIVE (5) BEHNKE, SIMMONS, SPRANGER, STETLER AND TROUTMAN IN FAVOR; THREE (3) BARKER, HICKS AND MORRIS OPPOSED. MOTION APPROVED.

- C. ZONING RECLASSIFICATION (Z-03-08): Petition from Mahmoud & Cynthia Fadel, 22501 Waubasca Rd., Battle Creek, MI, requesting a Zoning Reclassification of the following described property from “R-1B Single Family Residential” to “C-3 Intensive Business District” for property located at 893 W. Territorial Rd., Parcel #6950-13-701-1.**

Discussion:

Commissioner Hicks asked what happens if this property is not developed for use as a car lot.

Mr. Glenn Perian stated if it were to be approved for the C-3 “Intensive Business” then any permitted use in the C-3 would be allowed at this location in addition to a car dealership. Said the zoning would stick with the land.

Mayor Behnke asked if this property was an oversight when Battle Creek Township merged with the City of Battle Creek.

Mr. Perian stated we do not have any record that says this property was ever zoned commercially. The Comprehensive Plan designates it to be residential zoned in the future.

Mayor Behnke asked when the filling-station last occupied this building. Mr. Perian stated he did not have that information regarding a filling-station. Said there has been a number of repair facilities at that location and noted that this property could continue as a Legal Non-Conforming use as a car repair business.

Commissioner Morris stated it was owned by the Fadel’s in 1997 when the Comprehensive Plan was completed and in 1992 when they purchased it, they understood it was a commercial site then. Because there is no record, is it because they have not been found regarding its use.

Mr. Perian stated we do not have the history on this property; that in the past history when Battle Creek Township merged with the city they tried to closely correspond the township zoning with the city zoning and zoning changes had occurred at that time. He strongly thinks the property has always been zoned residential.

Commissioner Stetler stated the Master Plan show this property to be residential zoned with 2 to 4 families per acre. Mr. Perian stated, yes that was correct. Mr. Stetler commented he is having a problem with the C-3 zoning and could go for a higher use than a Single Family Residential zone. Said there are some in between zones that could be used, and has a problem with the C-3 zoning.

Commissioner Simmons stated that its use as a car lot would be alright, as it is similar to a car repair use. The problem is if it were to be re-zoned “C-3 Intensive Business” it would open it up

to may different businesses. Said to the South and East it is residential and if allowed the neighbor would also want his zoning changed. He asked if the Master Plan should be revised; which is another issue and maybe should be done first before they violate how the Master Plan is setup.

Commissioner Morris asked if they could do a trial basis with a Special Use for a car lot and not the other "C-3" uses. Mr. Perian stated no, if you are going to waiver from the code requirements and not rezone it to a C-3 and want to allow for a car sales; then the avenue would be to ask the Zoning Board of Appeals for a Use Variance.

Commissioner Morris asked if we could table this appeal and have them look at that option. Mr. Perian stated if it were not to be approved by the Planning Commission, they could go to the Zoning Board and pay \$60.00 for application fee and request a Special Use Variance for a car lot.

Commissioner Hicks asked if that variance was temporary. Mr. Perian stated, no it would be specific to that property and be able to continue in perpetuity and could be a car lot. Mr. Hicks asked if having a variance approved would allow just the car sales and not the other C3 uses.

Mr. Glenn Perian stated yes they would be allowed to sell cars if approved, and have the authority to grant a use variance for a specific use. Said he would think to obtain a use variance would be difficult if the zoning board follows the criteria outlined for them in granting use variances because it basically would say that the property cannot be used for anything other than a car lot.

MOTION WAS MADE BY COMMISSIONER BARKER, SUPPORTED BY COMMISSIONER HICKS TO APPROVE THE PETITION FROM MAHMOUD AND CYNTHIA FADEL FOR ZONING RECLASSIFICATION FROM "R-1B SINGLE FAMILY RESIDENTIAL" TO C-3 INTENSIVE BUSINESS" FOR PROPERTY LOCATED AT 893 W. TERRITORIAL ROAD.

Discussion:

Commissioner Spranger stated he finds it difficult for the zoning being a C-3 use on 20th Street back to a C-2 and then changed back to a C-3 which abuts a residential zone. Noted there was a petition in the past that was turned down for a multi-Family use.

Commissioner Barker stated he was not in support of the motion and based that non-support by referencing the notes in the staff report on pages 4 & 5 that indicates the commercial use is in conflict with the Comprehensive Plan and the issue of the prior disapproval of multi-family dwellings as well and believe it could result in a spot zoning area.

A ROLL CALL VOTE WAS TAKEN: TWO (2) COMMISSIONER'S HICKS AND MORRIS IN FAVOR; SIX (6) COMMISSIONER'S BARKER, BEHNKE, SIMMONS, SPRANGER, STETLER AND TROUTMAN OPPOSED. MOTION FAILED.

- D. ZONING RECLASSIFICATION (Z-04-08): Petition from Mason-Capital, LLC, C/O Hinman Co., 750 Trade Centre Way, #100, Kalamazoo, MI 49008, requesting a Zoning Reclassification of the following described property from "O-1 Office District" to "C-2 General Business District" for property located at 2550 Capital Avenue, S.W., Parcel #6180-10-893-0.**

MOTION WAS MADE BY COMMISSIONER BARKER, SUPPORTED BY COMMISSIONER SIMMONS TO APPROVE THE PETITION FROM MASON-CAPITAL, LLC, C/O HINMAN CO. FOR ZONING RECLASSIFICATION FROM "O-1 OFFICE DISTRICT" TO C-2 GENERAL BUSINESS" FOR (39) PROPERTY LOCATED AT 2550 CAPITAL AVENUE, S.W.

Discussion:

Mayor Behnke stated he is pleased with the developments of the Hinman organization and find their success dropout S.W. Michigan to be second to none. Said he has concerns regarding the comments from the Neighborhood Planning Council in not making a decision because of not knowing what the uses might be. Noted it is clearly in the elementary stages of development and he would hope there is something they can do to help both the Hinman organization and the neighbors that reside close to the former National City Bank Drive-thru. That an increase of traffic does affect residential neighborhoods and need to work with the developer and the neighbors in that area. This is his position at this time.

A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED.

E. Approve Planning Commission Annual Meeting Dates for Year 2009.

MOTION WAS MADE BY COMMISSIONER BARKER, SUPPORTED BY COMMISSIONER MORRIS TO APPROVE THE PLANNING COMMISSION 2009 MEETING DATES; NOTING NOVEMBER 18, 2009 AND DECEMBER 16, 2009 AS ALTERNATE MEETING DATES DUE TO THE HOLIDAYS.

A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED.

9. Comments by the Public: None

10. Comments by the Staff and Commission Members:

Commissioner Hicks stated he was not sure how variations or changes are worked out if the Master Plan is not changed.

Commissioner Troutman stated that the property on Territorial has always been a car repair business and could continue to do so if they wished, unfortunately it has never been zoned as such.

Commissioner Barker stated he was pleased to see there will be a Special Commission meeting on November 20th regarding the Capital Improvement Program and that he planned on attending; pointed out he was glad to see the Mayor was Chairing that meeting.

11. Adjournment:

The meeting adjourned at 6:28 P.M.

Respectfully Submitted,
Leona Parrish, Administrative Assistant
Battle Creek City Planning Commission